

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 HENRY WILLIAM DEMPSEY, JR.,

12 Petitioner,

13 v.

14 STATE OF NEVADA,

15 Respondent.
16

Case No. 3:21-cv-00302-RCJ-WGC

ORDER

17 This is a habeas corpus action under 28 U.S.C. § 2254. Petitioner Henry Dempsey has
18 filed an application to proceed in forma pauperis. ECF No. 11. The court finds that Dempsey is
19 unable to pay the filing fee.

20 Dempsey also has filed a petition for a writ of habeas corpus and a motion for
21 appointment of counsel. ECF No. 10, ECF No. 12. The court has reviewed the petition under
22 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The
23 petition itself is 9 pages long, with two grounds. Ground 1 is a claim of a constitutional violation
24 during Dempsey's preliminary hearing. Dempsey pleaded guilty, and that guilty plea bars
25 consideration of ground 1. See Tollett v. Henderson, 411 U.S. 258, 267 (1973). Ground 2
26 contains around four claims of ineffective assistance of trial counsel. By themselves, the
27 allegations in ground 2 are too vague to warrant relief. However, following the 9 pages of the
28 petition are 428 pages of unenumerated exhibits. What stands out is that Dempsey was evaluated

1 for competence, and the evaluators concluded that Dempsey had an intelligence quotient between
2 50 and 79. Additionally, in those exhibits are transcripts of Dempsey's evidentiary hearing in his
3 state post-conviction habeas corpus proceedings, and those transcripts provide factual support to
4 Dempsey's claims of ineffective assistance of counsel in ground 2. Under these circumstances,
5 the court finds that appointment of counsel is warranted.

6 IT THEREFORE IS ORDERED that the application to proceed in forma pauperis (ECF
7 No. 11) is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

8 IT FURTHER IS ORDERED that petitioner's motion for appointment of counsel (ECF
9 No. 12) is **GRANTED**. Counsel will represent the petitioner in all federal proceedings related to
10 this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

11 IT FURTHER IS ORDERED that the Federal Public Defender is appointed provisionally
12 as counsel for petitioner. The Federal Public Defender will have 30 days from the date of entry of
13 this order either to undertake representation of petitioner or to indicate to the court the office's
14 inability to represent petitioner. If the Federal Public Defender is unable to represent petitioner,
15 then the court will appoint alternate counsel, subject again to establishment of financial eligibility.
16 The court will set a deadline for filing of an amended petition or a motion seeking other relief
17 after counsel has appeared. The court does not signify any implied finding of tolling during any
18 time period established or any extension granted. Petitioner always remains responsible for
19 calculating the limitation period of 28 U.S.C. § 2244(d)(1) and timely presenting claims. The
20 court makes no representation that the petition, any amendments to the petition, and any claims in
21 the petition or amendments are not subject to dismissal as untimely. See Sossa v. Diaz, 729 F.3d
22 1225, 1235 (9th Cir. 2013).

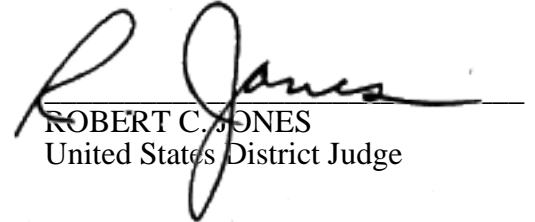
23 IT FURTHER IS ORDERED that the clerk add Aaron Ford, Attorney General for the
24 State of Nevada, as counsel for respondents.

25 IT FURTHER IS ORDERED that respondents' counsel must enter a notice of appearance
26 within 21 days of entry of this order, but no further response will be required from respondents
27 until further order of the court.
28

1 IT FURTHER IS ORDERED that the clerk provide copies of this order and all prior
2 filings to both the Attorney General and the Federal Public Defender in a manner consistent with
3 the clerk's current practice, such as regeneration of notices of electronic filing.

4 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper copies
5 of any electronically filed exhibits need not be provided to chambers or to the staff attorney,
6 unless later directed by the court.

7 DATED: November 22, 2021.

8 
9 ROBERT C. JONES
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28